

SUPPORT FOR THE AMENDMENTS

Claim 5 has been amended.

Claims 10-15 have been added.

Support for the amendment of Claim 5 and the introduction of Claims 10-15 is provided at paragraphs [0009], [0010], [0014], [0018], and the Examples

No new matter has been added by the present amendment.

REMARKS

Claims 1-5 and 7-15 are pending in the present application.

The rejection of Claim 5 under 35 U.S.C. §102(b) over Iwao et al (JP 2003-095942) is respectfully traversed.

Notably, Iwao et al is silent with respect to improving endurance in a subject in need thereof, where the subject in need thereof is a subject who needs to do exercise requiring endurance or labor requiring repeated muscle exercise.

The U.S. Courts have held that a method of administering a compound "to a human in need thereof" is properly construed to require that the compound be administered to human with a recognized need to treat the recited disorder or to bring about the recited effect (*Jansen v. Rexall Sundown Inc.*, 342 F.3d 1329, 1332, 68 USPQ2d 1154, 1158 (Fed. Cir. 2003)). The claims of the present invention require that the subject to which the claimed active agents are to be administered must be in need of improving endurance when the subject is one who needs to do exercise requiring endurance or labor requiring repeated muscle exercise.

Iwao et al fails to make any mention of a subject to be treated that falls within the scope of the claimed invention. Indeed, the only disclose use in Iwao et al are:

Glucose intake activation effect in muscle tissue,

GLUT4 translocation effect in muscle tissue (without data),

Glucose intake inhibition effect in adipose tissue, and

GLUT4 translocation inhibition effect in adipose cells.

Iwao et al further speculates that as a result of activation of glucose intake in muscle tissue, the amount of muscle cells are increased. As such, the active ingredient, which increases glucose intake in muscle tissue, has resulting effects such as muscle tissue

activation, reduction in physical exhaustion, increased ability for exercise, buildup of muscle tissue, and improving physical condition. However, Iwao et al does not directly disclose an endurance improving effect, much less disclose the subject of the presently claimed invention to which any composition is to be administered.

The Examiner is reminded that although Iwao et al disclose activation of GLUT4 translocation and glucose intake activation results in an increased ability for exercise, the word “ability for exercise” has several meanings which are not synonymous with or the same as improved endurance. The “ability for exercise” relates to, for example, agility, muscle force, instantaneous force. As evidenced by the references cited with the response filed on November 4, 2008, (Gaster et al, Shichun et al, and Tsao et al), activation of GLUT4 translocation and glucose intake activation do not have any relation with endurance improving effect. Indeed, activation of GLUT4 translocation has negative effects on endurance (lactate level and metabolize carbohydrate) as illustrated by the combined disclosures of the aforementioned previously submitted references.

Moreover, Applicants respectfully submit that there is no disclosure or suggestion in Iwao et al to administer to a subject who needs to do exercise requiring endurance or labor requiring repeated muscle exercise an effective dose of a composition consisting essentially of catechins as claimed in Claim 5. As such, Applicants submit that the claimed invention is not anticipated by Iwao et al.

Applicants request withdrawal of this ground of rejection.

Applicants submit that the present application is now in condition for allowance.

Early notification of such action is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.  
Norman F. Oblon

A handwritten signature in black ink, appearing to read 'V. Shier', with a long horizontal flourish extending to the right.

Vincent K. Shier, Ph.D.  
Registration No. 50,552

Customer Number

**22850**

Tel: (703) 413-3000  
Fax: (703) 413-2220  
(OSMMN 08/03)